RULES
OF
TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF SECURITIES

CHAPTER 0780-4-2
SECURITIES REGISTRATION AND EXEMPTIONS

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0780-4-2-.01 REGISTRATION BY COORDINATION.

(1) Securities may be registered by coordination with SEC registration. A registration statement and a prospectus for such securities shall be filed with a completed and properly executed Form U-1, including all applicable exhibits thereto, a Form U-2, a Form U2A (if applicable) and the appropriate filing fee computed in accordance with T.C.A §48-2-107(b). The registrant shall also provide, or in Item 8(k) of the Form U-1 undertake to provide promptly if unavailable on the date of filing:

(a) Any additional exhibits included in Part II of the applicable SEC registration statement;

(b) Any applicable cross-reference sheet, including but not limited to cross-reference sheets adopted by NASAA; and

(c) Such other information as the Division may require to determine that the offering meets applicable fairness guidelines and that the registration statement does not include any untrue statement of a material fact required to be stated therein or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they are made, not misleading.

(2) Only those offerings registered by coordination in this state on Forms 1-A, S-1, S-2, S-3, S-4, S-11, SB-1 and SB-2, or any successors to these forms, are subject to review under the applicable portions of rule 0780-4-2-.06.

(3) Until such time as an applicant has complied with all filing requirements and Division comments, the applicant may waive automatic concurrent effectiveness by written notice to the Division. Once an applicant has fully complied with the filing requirements set forth in the Act and in these rules, and has satisfied all outstanding comments issued by the Division, the Commissioner shall make the application to register effective or conditionally clear the application to register until notification of SEC effectiveness, subject to any condition or limitations imposed by the Division. The Division shall give notice by mail of the effective date of registration to each registrant, but such notice shall be conditioned upon the Division's receipt of notice from the applicant of the date that its registration statement was made effective by the SEC.

(4) Every registration statement covering securities registered by coordination is effective for one (1) year from the effective date. Renewals of registrations by coordination may be made in accordance with rule 0780-4-2-.05.

(Rule 0780-4-2-.01, continued)

Authority: *T.C.A. §§48-2-105, 48-2-107, and 48-2-116(a).* ***Administrative History:*** *Original rule filed September 9, 1980; effective October 24, 1980. Repeal and new rule filed September 28, 1990; effective November 12, 1990. Amendment filed April 5, 2004; effective June 19, 2004.*

0780-4-2-.02 REGISTRATION BY QUALIFICATION.

(1) An application filed pursuant to *T.C.A. §48-2-106* shall contain, at a minimum, all of the information and the documents specified in Schedule A of the 1933 Act to the extent applicable, unless filed pursuant to a registration statement or notice filing format prescribed by the SEC or filed on the Form U-7.

(2) A prospectus or offering circular shall be submitted with a completed and properly executed Form U-1 and the appropriate filing fee computed in accordance *with T.C.A. §48-2-107(b)*, and shall contain or be accompanied by the following information;

(a) The Uniform Consent to Service of Process on Form U-2 required by *T.C.A.§48-2-124(e)*;

(b) The Uniform Form of Corporate Resolution on Form U-2A, if applicable;

(c) Any applicable cross-reference sheet, including but not limited to cross reference sheets adopted by NASAA; and

(d) Such other information as the Division may require to determine that the offering meets applicable fairness guidelines and that the prospectus or offering circular does not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

(3) All notices, circulars, advertisements, sales literature or communications required to be filed by *T.C.A. §48-2-106(b)(5)* shall be filed according to the terms and conditions set forth in rule 0780-4-2-.04 of these rules.

(4) All offerings registered by qualification are subject to review under the applicable portions of rule 0780-4-2-.06

(5) Every registration statement covering securities registered by qualification is effective for one (1) year from the effective date. Renewals of registrations by qualification may be made in accordance with rule 0780-4-2-.05.

Authority: *T.C.A. §§48-2-106, 48-2-107, and 48-2-116(a).* ***Administrative History:*** *Original rule filed January 13, 1983; effective February 14, 1983. Repeal and new rule filed September 28, 1990; effective November 12, 1990.*

0780-4-2-.03 SECURITIES REGISTRATION GENERALLY.

(1) Review Procedures for Registrations.

(a) At the time an application to register securities that is subject to review under either rule 0780-4-2-.01(3) or rule 0780-4-2-.02(4) is filed and the proper fee is received, the Division may in its sole discretion make a preliminary review of the application to determine which of the following review procedures will be employed in connection with the filing:

1. Deferred Review. If the Division staff has determined after an initial analysis that the application is so deficient or presents problems so serious that the Division could not justify spending more time in reviewing the application, review will be deferred and the applicant will be promptly notified. Detailed comments will not be prepared or issued

and it will be the responsibility of the applicant to consider whether to withdraw or amend the application.

2. Summary Review. This category of review involves notification to an applicant that the Division staff has made only a summary review of the application and only such comments as may arise from such review will be made. In such cases, applicants may be required to furnish as supplemental information certain representations on behalf of the issuer, including representations that the issuer is aware that the Division staff has made only a summary rather than a detailed full review of the application.

3. Full Review. In the final category of review, applications will receive a more complete accounting, financial and legal review. The Division staff will undertake to provide timely comments regarding the application for registration, which may include requirements for additional exhibits or supplemental data. Upon satisfactory compliance with any comments, the Division shall declare the application effective or conditionally clear the application pending notice of SEC effectiveness without a receipt of representation letters form the persons mentioned in the preceding part.

(b) Notwithstanding the type of review performed, the burden of compliance with the Act and these rules remains with the issuer and as a matter of law cannot be shifted to the Division's staff.

(2) Post Effective Reports.

(a) The Assistant Commissioner may as a condition to registration require the person who filed the application for registration to file specified current financial information on a periodic basis. The Assistant Commissioner may also as a condition to registration require the filing of periodic reports on the use of proceeds. Such information may be submitted in letter form or by filing a copy of any form containing the required information that the issuer has filed with the SEC or any state securities agency.

(b) The person who filed the application for registration shall file a final sales report of the dollar amount and number of securities sold in this state, provided, however, that no final sales report shall be due with respect to any twelve month period covering an initial registration or a renewal pursuant to which the maximum filing fee was paid pursuant to *T.C.A. §48-2-107(b).* Unless an extension is granted by the Assistant Commissioner, such report shall be filed within thirty (30) days after the expiration of the effectiveness of the registration statement or the termination or completion of the offering of the securities covered by the registration statement, whichever is earlier. The report may be submitted in letter form or by filing a copy of any form containing the required information that the issuer has filed with the SEC or any state securities agency.

(3) Legend Requirement.

(a) Offering documents for securities to be registered in this state and registered or to be registered with the SEC under the 1933 Act shall contain on the cover page substantially the following legend in capital and letters and, if printed, in boldface roman type at least as high as ten-point modern type:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISION OR ANY STATE SECURITIES COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

(Rule 0780-4-2-.03, continued)

(b) Offering documents for securities to be registered in this state that will not be registered with the SEC under the 1933 Act shall contain on the cover page substantially the following legend in capital letters and, if printed, in boldface roman type at least as high as ten-point modern type:

THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION SET FORTH IN THE SECURITIES ACT OF 1933. THESE SECURITIES HAVE BEEN REGISTERED WITH THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE. SUCH REGISTRATION DOES NOT CONSTITUTE A RECOMMENDATION OR ENDORSEMENT OF ANY SECURITY, NOR HAS THE TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE PASSED UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THIS OFFERING DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

(4) Prospectuses.

(a) Preliminary Prospectuses. The publication and distribution of preliminary prospectuses in connection with proposed offerings to Tennessee residents shall be permitted if such preliminary prospectuses:

1. Are used for the purpose of obtaining indications of interest (as distinguished from firm commitments to purchase) in the proposed securities;

2. Are filed with the Division no later than the date of first use in this state; and

3. Contain the legend required by the SEC, if applicable, or substantially the following legend in capital letters and, if printed, in at least 10-point boldface type on the cover.

AN APPLICATION TO REGISTER THESE SECURITIES HAS BEEN FILED WITH THE TENNESSEE COMMISSIONER OF COMMERCE AND INSURANCE. THESE SECURITIES MAY NOT BE SOLD NOR MAY OFFERS TO BUY BE ACCEPTED PRIOR TO THE TIME THE REGISTRATION BECOMES EFFECTIVE.

(b) Any person filing a registration statement pursuant to *T.C.A. §48-2-105* that is described in rule 0780-4-2-.01(2) or pursuant to *T.C.A. §48-2-106* shall promptly file with the Division all amendments to each registration statement (other than amendments which merely delay the effective date of the registration statement) and all supplements to each addition or deletion to the offering material made in the amendment.

(c) After the effective date of an application to register securities, no prospectus shall be used in this state unless it contains all supplements to the prospectus as of the date of its use.

(5) Abandonment. If an application to register securities has been on file with the Division for more than one year without becoming registered, or if no written communication addressing offering terms in response to comments or a substantive amendment is received in connection with the application for a period of six (6) months, the Division may, in its discretion, determine whether the application for registration has been abandoned by the following procedure:

(a) Notice will be sent to the correspondent designated on the Form U-1, as amended, by certified mail, return receipt requested, at the correspondent's most recent address designated on the Form U-1. Such notice will inform the correspondent that the application for registration is out of date and must either be updated or withdrawn within thirty (30) days after the date of such notice.

(Rule 0780-4-2-.03, continued)

(b) If the correspondent fails to respond to such a notice by filing a substantive update or withdrawing the application for registration, the Division may enter an order declaring the application for registration abandoned.

(c) If applicable, the applicant may request a return of the refundable portion of the registration fee pursuant to rule 0780-4-1-.04-(2)(c).

(6) Blank-Check Offerings.

(a) This subparagraph (6) is not intended to apply to offerings to be registered where the type of business or property is identified in the registration statement but the specific property or investment has not been identified. Specifically, this subparagraph (6) shall not be applied to non-specified blind-pool offerings with adequate disclosure of investment objectives.

(b) An issuer must disclose with specificity, in the registration statement, its business plan and its intended use of net proceeds from an offering to be registered. The description of the issuer's business plan and use of net proceeds must enable offerees to know with reasonable certainty what types of business or industry the issuer will be engaged in, the types of products or services the issuer will manufacture, sell or provide, and the identity and experience of the principal managers of the business to be acquired or developed.

(c) An offering of securities by a development stage company that commits less than 75% of the net proceeds of an offering for use in a specific business to be acquired or developed shall be considered a blank-check offering. The Commissioner shall deem the registration statement of a blank-check offering to be one that omits to state a necessary material fact under T.C.A. §48-2-121(2) and the blank check offering itself as one that would work or tend to work a fraud on purchasers, and may take any action authorized by law, including but not limited to the issuance of an order pursuant to T.C.A. §§48-2-108 and 48-2-116 denying, suspending or revoking registration or the use of any exemption, which order may name the issuer, its controlling persons, and any underwriter or seller of the securities.

(d) For purposes of this subparagraph (6), the terms below shall have the following meanings;

1. "Development stage company" shall mean any issuer devoting substantially all of its efforts to establishing a new business and either: (I) planned principal operations have not commenced; or (II) planned principal operations have commenced, but there has been no significant revenue therefrom.

2. "Net proceeds" shall mean the amount of offering proceeds remaining after payment of selling commissions and expenses and all other expenses paid or payable in connection with the offer and sale of securities, such as printing, legal, accounting and filing fees.

(7) Multiple Securities Under Single Registration Statement.

Any issuer filing an initial or renewal application for registration of more than one security pursuant to a single registration statement may file:

(a) A single Form U-1 if that form is completed to clearly enumerate each security and the proposed dollar amount of each security for which the application for registration is being made; and

(b) A single check combining the filing fees payable for the securities listed on the Form U-1.

(Rule 0780-4-2-.03, continued)

Authority: *T.C.A. §§48-2-107, 48-2-116(a), and 48-2-116(e).* ***Administrative History:*** *Original rule filed January 13, 1983; effective February 14, 1983. Repeal and new rule filed September 28, 1990; effective November 12, 1990.*

0780-4-2-.04 ADVERTISING AND SALES LITERATURE.

(1) All advertising and sales literature of any kind to be used directly or indirectly in connection with the offer or sale of securities registered or subject to registration in this state, whether through written, radio or television medium, except advertising and sales literature described in SEC Rule 134 (17 CFR 230.134), shall be filed with the Division prior to the proposed use date or circulation date.

(2) For purposes of this rule, the term "advertising and sales literature" shall be deemed to include any communication distributed or made available to prospective investors or the public by any person to offer to sell or to induce the sale of securities other than a prospectus, a preliminary prospectus or any prospectus supplements that have been filed with the Division as part of an application for registration. The sales material shall present a balanced discussion of both risk and reward. The contents of advertising and sales literature shall be consistent with representations in the prospectus.

(3) No advertising or sales literature of any kind shall contain:

(a) Any untrue statement of material fact or any omission to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(b) Any statement or implication that the securities offered are without risk, that returns are assured, or that failure or loss of the investment is not possible.

(4) All advertising or sales literature of any kind used in connection with offerings registered or to be registered shall contain:

(a) The name of the issuer and of the person circulating or publishing the same.

(b) A statement showing the relationship between the issuer or dealer and every person whose name is used or from whom quotations are made.

(c) A statement clearly indicating the source and authority of all reports, statements, or claims used in whole or in part or in any manner referred to therein.

(d) 1. Substantially the following legend:

"THIS IS NEITHER AN OFFER TO SELL NOR A SOLICITATION OF AN OFFER TO BUY THE SECURITIES DESCRIBED HEREIN. AN OFFERING IS MADE ONLY BY THE PROSPECTUS".

2. If printed, the legend shall appear on the face of the advertising or sales literature in type as large as that used generally in the body thereof.

(5) Oral statements made by salesmen or other persons in connection with the purchase or sale of a security registered or to be registered supplementing, interpreting or explaining any advertising or sales literature or made in connection with sales meetings or seminars shall be consistent with representations in the prospectus.

(6) The Commissioner may notify the filer in writing if he/she determines that the advertising and sales literature submitted in accordance with paragraph (1) of this rule fails to conform with the provisions of this rule, or the Act, or has been otherwise determined to be unfair or deceptive. Such notice shall specify the reason(s) for the Commissioner's determination and shall afford the filer a right to a

(Rule 0780-4-2-.04, continued)

hearing in compliance with the Tennessee Uniform Administrative Procedures Act, *T.C.A. §4-5-301, et seq.*

(7) After notice and a hearing, the Commissioner may order any person to cease and desist from using any advertising and sales literature that is determined to violate this chapter.

(8) Failure of the Commissioner to issue a notice pursuant to paragraph (6) of this rule shall not relieve any person of responsibility for compliance with this chapter, nor will this failure waive any right of the Commissioner to bring an action against a person for violation of this chapter.

(9) The provisions of paragraphs (1) through (8) of this rule shall not apply to advertising or sales literature of any kind meeting the requirements of SEC Rules 134 (17 CFR 230.134), 156 (17 CFR 230.156) and 482 (17 CFR 230.482) or any successor rules relating to advertising and sales literature used in the sale of investment company shares registered pursuant to the Investment Company Act of 1940, unless such advertising or sales literature is not filed with and is not subject to review by the NASD or the SEC.

Authority: *T.C.A. §§48-2-105, 48-2-106, 48-2-113, and 48-2-116(a).* ***Administrative History:*** *Original rule filed January 13, 1983; effective February 14, 1983. Amendment filed August 29, 1984; effective September 28, 1984. Amendment filed March 20, 1985; effective June 14, 1985. Amendment filed January 29, 1988; effective April 27, 1988. Repeal and new rule filed September 28, 1990; effective November 12, 1990.*

0780-4-2-.05 RENEWALS.

Registration statements are effective for a period of one year (1) from the date of effectiveness and may be renewed, unless a more specific rule regulating a certain type of security states to the contrary, for additional periods of one (1) year by filing an application for registration by qualification not later than twenty (20) days prior to the expiration of effectiveness, to include the following:

(1) A completed Form U-1 designating that the application is being made pursuant to *T.C.A. §48-2-106,* except that any exhibits filed with the Division within five (5) years preceding the filing of the application may be incorporated by reference to the extent that such exhibits are currently accurate, unless the Division specifically requests that such exhibits be filed;

(2) One copy of the most recent prospectus;

(3) One copy of each statement of additional information or supplement to the most recent prospectus, if any;

(4) If the issuer has changed its name since the most recent prior filing, a completed Form U-2, unless such form reflecting the amended name change has been previously filed with the Division; and

(5) The appropriate filing fee computed in accordance with *T.C.A. §48-2-107(b).*

Authority: *T.C.A. §§48-2-107 and 48-2-116(a).* ***Administrative History:*** *Original rule filed September 28, 1990; effective November 12, 1990.*

0780-4-2-.06 STANDARDS OF FAIRNESS AND REASONABLENESS.

(1) General Rule.

All securities covered by this rule shall be offered upon such terms and conditions that the potential rewards to the investors and to the promoter or issuer of the securities bear a reasonable relation to the risks assumed by each.

(Rule 0780-4-2-.06, continued)

(2) Applicability.

(a) Unless different criteria for a specific type of security are set forth elsewhere in these rule, this rules shall apply to:

1. All offerings filed for registration in this state pursuant to *T.C.A. §48-2-105*, except as provided in rule 0780-4-2-.01(3); and

2. All offerings filed for registration in this state pursuant to *T.C.A. §48-2-106*.

(b) With respect to offerings registered by coordination or by qualification, if there is any conflict between the disclosure or accounting requirements of this rule and those of the SEC, the Division may accept compliance with the SEC requirements in lieu of compliance with this rule.

(3) Variances. The standards set forth in this rule are intended to furnish guidelines for the determination that an application for registration meets the requirement of paragraph (1) above. These standards are not meant to preclude the application of more liberal or more stringent standards if the circumstances of a particular application for registration so justify. The Division may modify or waive any of the standards set forth in paragraph (4) of this rule where good cause is shown or where the goal sought to be achieved by these guidelines can be accomplished by other means. Good cause may be shown by a demonstration of adequate alternative safeguards built into a particular offering that bring that offering within the spirit of paragraph (1) of this rule.

(4) Standards.

(a) An offering which meets the applicable provisions of this paragraph (4) will be deemed to meet the standard of paragraph (1) of this rule.

(b) The following definitions shall apply to this rule except as expressly provided otherwise herein:

1. “Earnings Per Share” means net profits determined on a per share basis after taxes but before extraordinary items, calculated in accordance with generally accepted accounting principles consistently applied on a fully diluted basis.

2. “Equity Investment of Promoters” means the total of all cash, together with the reasonable value of all assets contributed to the issuer as determined by qualified independent appraisals acceptable to the Assistant Commissioner, and may be adjusted by the earned surplus or deficit of the issuer subsequent to the dates of contribution.

3. “Equity Security” means any common stock or similar security; or any instrument convertible, with or without consideration, into such a security, or carrying a warrant, option or right to subscribe to or purchase such a security; or any such warrant, option or right.

4. “Firm Market” means a market in which quoted prices are those at which a security can actually be bought and sold currently, and are not quotes that are merely based on historical prices.

5. “Person” means any individual, corporation, partnership, trust, or other legal entity, or any unincorporated association or organization, and includes the following: (i) any relative, spouse, or relative of the spouse of the specified person (ii) any trust or estate in which the specified person or any of the persons specified in (i) collectively own five percent (5%) or more of the total beneficial interest or of which any of such persons serve as trustee, executor, or in any similar capacity; and (iii) any corporation or other organization (other than the issuer corporation) in which the specified person or any of

the persons specified in (i) are the beneficial owners collectively of five percent (5%) or more of any class of equity securities or five percent (5%) or more of the equity interest.

6. "Promoter" means: (i) any person who, acting alone or in conjunction with one or more person's directly or indirectly, takes the initiative in founding and organizing the business or enterprise of a corporation; (ii) any person who, in connection with the founding or organizing of the business or enterprise of a corporation, directly or indirectly receives in consideration of services or property or both services and property five percent (5%) or more of any class of equity security of the corporation or five percent (5%) or more of the proceeds from the sale of any class of equity security of the corporation; provided, however, that a person who receives such securities or proceeds solely as underwriting commissions shall not be deemed a promoter within the meaning of this clause if such person does not otherwise take part in founding and organizing the enterprise; (iii) any person who is an officer, director, or who beneficially owns, directly or indirectly, more than five percent (5%) of any class of equity security of a corporation, excluding any unaffiliated institutional investor that purchased its shares more than two years prior to the filing date of the proposed offering; (iv) any person who is an affiliate of a person specified under clause (i), (ii), or (iii), of this part .

7. "Promotional or Development Stage Corporation" means a corporation which has no public market for its shares and has no significant earnings. All other corporations shall be deemed "Seasoned Corporations".

8. "Promotional Shares" means those equity securities which were issued within three (3) years prior to the filing date or are to be issued to promoters for a consideration valued at less than eighty five percent (85%) of the proposed public offering price excluding the number of such securities calculated by dividing eighty five percent (85%) of the public offering price per share into the total consideration paid by promoters for their shares. Equity securities which were, or are to be, issued for services rendered, patents, copyrights or other intangibles are presumed to be promotional shares unless the value of such intangibles has been established to the satisfaction of the Division. In determining the consideration paid or the value of property under this definition, the Division may recognize as consideration any property, including patents, copyrights or other intangibles (except goodwill) to the extent that the fair market value of such assets is established to the Division's satisfaction. Consideration for equity securities may include the fair market value of such assets if the fair market value can be determined by an independent appraisal (according to recognized standards of valuation) that is acceptable to the Division and may also include verifiable out-of-pocket development or marketing expenses (excluding promoters' salaries) paid by promoters to the extent such expenses are not reimbursed by the issuer. Excluded from this definition shall be any shares issued to promoters at the same price paid by unaffiliated persons in offerings made pursuant to SEC Regulation D.

(Rule 0780-4-2-.06, continued)

EXAMPLE: Calculations of number of promotional shares.

	# of shares	Total Price Paid Per Share	
Shares Held by Promoters	100		$1.00
Public Offering Price Per Share			$10.00
Total Paid by Promoters		$100.00	
Public Offering Price Per Share x .85		$10x.85	
Fully Paid Shares		$100.00	
		$8.50 =	11.77*
Shares Held by Promoters	100		
- Fully Paid Shares	-12*		
Number of Promotional Shares	88		

*Rounded

9. "Public Market" means, with respect to the equity securities of an issuer, that one of the following criteria is met:

(i) The security is traded on a national or regional stock exchange registered under the Securities Exchange Act of 1934;

(ii) The security is designated on the Nasdaq National Market; or

(iii) Each of the following criteria is met:

(I) There were at least three hundred (300) holders of the security at the beginning and end of the sixth-month period preceding the date of the filing;

(II) At least two hundred thousand (200,000) shares of the security are publicly outstanding (exclusive of securities held by officers, directors and five percent (5%) holders);

(III) At least two (2) broker-dealers regularly make a market in the security;

(IV) At least one (1) financial publication regularly quotes the market price;

(V) Trading of the security in the six-month period preceding the date of the filing averaged at least one hundred (100) transactions or at least five percent (5%) of the outstanding securities (not including securities held by officers, directors, and five percent (5%) security holders) per month; and

(VI) The bid price and the asking price represent quotations in a firm market.

(Rule 0780-4-2-.06, continued)

10. "Significant Earnings" shall be deemed to exist if the corporation's earnings record over the last five years (or such shorter period of the corporation's existence, but in no event less than three years) demonstrates that it would have met either of the earnings tests set forth in items (f)4.(i)(I) and (II) of this rule based upon its shares outstanding immediately before the proposed public offering.

11. "Unaffiliated Institutional Investor" includes any unaffiliated: bank; investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of the Investment Company Act of 1940; small business investment company licensed by the U.S. Small Business Administration under section 301 of the Small Business Investment Act of 1958; employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974; insurance company; private business development company as defined in Section 202 (a)(22) of the Investment Advisers Act of 1940 or comparable business entity engaged as a substantial part of its business in the purchase and sale of securities and which owns less than 20% of the securities to be outstanding at the completion of the proposed public offering.

(c) Options and Warrants.

The amounts and kinds of options and warrants to purchase securities issued or sold, other than ratably in connection with a proposed offering of equity securities or securities convertible into equity securities, shall be reasonable. The amounts and kinds of options and warrants are presumed to be reasonable if they satisfy the following conditions:

1. With respect to options or warrants to underwriters:

(i) The options or warrants are issued to the managing underwriters under a firm commitment underwriting agreement only after the entire issue has been sold, provided that the options and warrants are not assignable or transferable except among or to the partners, or officers and directors of the managing underwriters;

(ii) The exercise price of the options or warrants is at least equal to the public offering price with a step-up of the exercise price of either seven percent (7%) each year such options and warrants are outstanding, or in the alternative, an over-all twenty percent (20%) step up at any time after one (1) year from the date of issuance. The step-up shall commence twelve (12) months after the grant of the options or warrants. The election as to either step–up alternative must be made by the underwriters at the time that the options or warrants are issued;

(iii) The options or warrants are issued by a relatively small company other than a seasoned issuer with a public market, or where it appears from all of the facts and circumstances that the issuance of options or warrants is necessary to obtain competent investment banking services, provided that the direct commissions to the underwriters are lower than the usual and customary commissions would be in the absence of such options and warrants;

(iv) The securities covered by the options and warrants consist solely of securities of the same class and of the same issuer as those securities proposed to be sold to the public in the offering under consideration;

(v) The number of shares covered by all options or warrants does not exceed twelve percent (12%) of the securities proposed to be sold to the public in the offering under consideration;

(Rule 0780-4-2-.06, continued)

(vi) The options or warrants do not exceed five (5) years in duration and are exercisable no sooner than one (1) year after issuance; and

(vii) The value of the options or warrants shall be included in the computation of underwriting commissions and discounts. The market value of such options or warrants, if any, shall be used, and where no market value exists, a presumed fair value of not less than twenty percent (20%) of the public offering price of the stock to which the options or warrants relate shall be used, unless evidence indicates that a different value exists.

2. With respect to options or warrants issued to persons other than underwriters in connection with financing arrangements made by the issuer, the options or warrants are issued as a result of bonafide negotiations between the issuer and persons not affiliated with the issuer, and upon terms and conditions which are reasonable in light of the proposed public offering.

3. The total amount of options and warrants issued or reserved for issuance at the date of the public offering, excluding those issued in connection with acquisitions, does not exceed either twelve percent (12%) of the shares to be outstanding upon completion of the offering or twelve percent (12%) of the shares outstanding during the twelve (12) month period commencing with the effective date of the registration. The number of options and warrants issued or reserved for issuance may be disregarded if the issuer states in the prospectus that the amount of outstanding options and warrants shall not exceed the above amount during the period the registration statement is effective with the Division.

4. All options and warrants except those issued to financing institutions other than underwriters shall be issued at not less than eighty five percent (85%) of fair market value on the date of issuance, or where no market exists, at not less that eighty five percent (85%) of book value on the date of issuance, and the exercise price shall not be subject to change by the issuer except in accordance with anti-dilution provisions in effect on the date of issuance.

(d) Offering Price.

1. The offering price of equity securities of seasoned corporations may be deemed unfair to the purchasers unless at least one of the following conditions is met:

(i) The price for the equity security does not exceed thirty-three (33) times the issuer's net earnings per share for the last twelve (12) months, or does not exceed thirty three(33) times its average annual net earnings per share for the last three (3) years prior to the proposed offering date;

(ii) The price of the equity security is based on a public market; or

(iii) If there is no public market, the issuer may show that the proposed price-earnings ratio is justified in relation to price earnings ratios of comparable companies by means of published industry guides that include key business ratios. Comparable companies shall mean companies similar in terms of size, history of operations, industry and products, and other relevant factors. Key business ratios include but are not limited to liquidity ratios, activity ratios, leverage ratios, profitability ratios, and common stock ratios.

2. The offering price of equity securities of promotional or development stage corporations shall be reasonably related to the price paid for the stock by promoters or controlling persons of the issuer except as permitted by subparagraph (f) of this rule regarding

promotional shares. Facts and circumstances to be considered shall include, but not limited to, the following: the price paid for the equity securities by promoters or controlling persons of the issuer in transactions effected within three (3) years prior to the public offering; the book value of the equity security; the market value of the corporation's assets; and the sophistication of the proposed purchasers.

(e) Selling Commissions and Expenses

1. The aggregate amount of underwriters' and sellers' discounts, commissions, and other compensation shall be reasonable. Such compensation is presumed reasonable if the total of all underwriters' or sellers' compensation and other expenses in connection with the offering does not exceed fifteen percent (15%) of the gross proceeds of the offering, except that in the case of securities which qualify for registration on Forms S-B1 or S-B2 under the Securities Act of 1933 or which qualify for exemption pursuant to Regulation A under the Securities Act of 1933, the total underwriters' and sellers' compensation and all other expenses will be presumed reasonable if not in excess of twenty percent (20%) of the gross proceeds of the offering. See also subpart (c)1.(vii) of this rule.

2. Compensation to be received by underwriters or sellers shall include, but is not limited to, the following:

(i) Underwriter's discounts, commissions, or concessions;

(ii) Non-accountable expense allowances;

(iii) Expenses incurred by an underwriter or related person payable by the issuer or from the proceeds of the offering to or on behalf of an underwriter or related person;

(iv) Finder's fees known to be payable at the commencement of the offering;

(v) Wholesaler's fees;

(vi) Financial consulting and advisory fees, whether in the form of cash, securities, or any other item of value which are connected with or related to the offering unless an ongoing financial consulting or advisory relationship between the proposed issuer or affiliate and the proposed underwriter or related person has been established at least twelve (12) months prior to the filing of the registration statement;

(vii) Stock, options, warrants and other securities, the options and warrants to be valued in accordance with subpart c1.(vii) above;

(viii) Special sales incentive items;

(ix) A right provided to an underwriter or related person to require the issuer upon demand to register securities on behalf of the underwriter or person in the future at the expense of the issuer, which shall be valued at one percent (1%) of the gross proceeds of the offering, unless the demand is for only one such registration in which event the right to demand registration shall be valued at one half of one percent (.5%) of the gross proceeds of the offering; provided, however, that a right to "piggyback" on a non demand registration shall be valued at one quarter of one percent (.25%) of the gross proceeds of the offering unless the underwriter agrees to pay its pro rata share of offering expenses incurred as a result of such securities being included in the offering;

(x) Commissions, expense reimbursements, or other compensation to be received by an underwriter or related person as a result of the exercise of the conversion within twelve (12) months following the effective date of the offering of warrants, options, convertible securities, or similar securities distributed as part of the offering; and

(xi) If promotional shares are issued to an underwriter, the difference between the consideration paid and the public offering price shall be considered compensation to the underwriters.

3. All underwriter compensation set forth in part 2. above, when added to all other marketing expenses, such as printing costs, registration fees, filing fees, issuer's attorneys and accounting fees, fees and expenses of underwriters counsel, accountable expense allowances paid to underwriters and miscellaneous marketing expenses, shall not exceed the limit imposed in part 1. above.

4. If the securities are sold under a deferred or installment plan, the underwriters' or sellers' commissions payable in cash shall be payable pro rata over the life of the plan.

5. In the case of the sale to the public of outstanding securities held by existing security holders to be sold alone or in conjunction with the sale of securities by the issuer, the selling security holders shall pay, as the case may be, all of their equitable portion of the selling commissions and expenses.

(f) Promotional Shares.

1. Maximum Amount of Promotional Shares. If the maximum amount of promotional shares exceeds thirty three percent (33%) of the outstanding shares of stock of the issuer after the completion of the offering, the promotional shares will be subject to part 3. below.

2. Mergers, Recapitalizations, Reorganizations and Stock Splits

(i) If the maximum amount of dilution to public investors exceeds seventy-five percent (75%) of the public offering price after the completion of the offering, the promotional shares will be subject to part 3, below; and

(ii) Even if the amount of dilution to public investors does not exceed seventy-five percent (75%) of the public offering price after the completion of the offering, all shares owned by officers, directors, and parties owning five percent (5%) or more of the outstanding shares of the corporation before the public offering that cause dilution in excess of forty percent (40%) of the public offering price after the completion of the offering shall be subject to escrow pursuant to part 3.

3. Escrow of Promotional Shares. The Assistant Commissioner may require as a condition of registration that all or part of any promotional shares be deposited in escrow absent adequate justification that escrow of such shares is not in the public interest and not necessary for the protection of investors.

4. Release Provisions.

(i) Promotional shares which are to be escrowed shall remain in escrow until the sixth anniversary of the effective date of the registration. On the sixth, seventh, eighth, and ninth anniversary dates, twenty five percent (25%) of each promoter's shares

shall be released form escrow. Shares may also be released from escrow upon the achievement by the issuer of any of the following tests during the escrow period:

(I) After two consecutive fiscal years form the date of effectiveness, during which the issuer has minimum average annual earnings per share equal to six percent (6%) of the public offering price.

(II) After five fiscal years from the date of effectiveness, the average earnings per share are equal to five percent (5%) or more of the public offering price.

(III) After one year, for a term of at least ninety (90) consecutive trading days following such one-year period, and for the thirty (30) trading days prior to the requested termination date of the escrow, the shares of the issuer are trading in a reliable public market at a price at least one-hundred seventy-five percent (175%) of the initial public offering price.

(ii) A request for termination of an escrow based on satisfaction of either of the tests set forth in item (I) and (II) above shall be accompanied by an earnings per share calculation audited and reported on by an independent certified public accountant.

5. Terms of Escrow

(i) The shares in escrow may be transferred by will or pursuant to the laws of descent and distribution or through appropriate legal proceedings without the consent of the Assistant Commissioner, but in all such cases the shares shall remain in escrow and subject to the terms of the escrow agreement. In addition, upon the death of a promoter, such promoter's escrowed shares may be hypothecated, subject to all of the terms of the escrow agreement, to the extent necessary to pay the expenses of the estate; otherwise, the escrowed shares may not be pledged to secure a debt. The securities in escrow may be transferred by gift to family members, provided that the shares remain subject to the terms of the escrow agreement.

(ii) The shares required to be held in escrow as a condition to registration of a public offering shall not have any right, title, interest, or participation in the assets of the issuer in the event of dissolution, liquidation, merger, consolidation, reorganization, sales of assets, exchange or any other transaction or proceeding which contemplates or results in the distribution of the assets of the issuer, until the holders of all shares not escrowed have received, or had irrevocably set aside for them, an amount equal to the purchase price per share in the public offering, adjusted for stock splits and stock dividends. Subsequently, the holders of the escrowed shares shall be entitled to receive an amount per share equal to the amount received by or set aside for the holders of the non escrowed shares, on a per share basis, plus any dividends and interest set aside for the escrowed shares, to the extent any such cash dividends plus interest are not necessary to meet the issuer's obligation of payment to holders of shares not escrowed, and thereafter all shares shall participate on a pro rata basis. However, a merger, consolidation, or reorganization may proceed on terms and conditions different than those stated above if a majority of shares held by persons other than promoters approve the terms and conditions by vote at a meeting held for such purpose.

(iii) Shares held in escrow shall continue to have all voting rights to which those shares are entitled. Any dividends paid on such shares shall be paid to the escrow agent and held pursuant to the terms of the escrow agreement. The escrow agent shall treat such dividends as assets available for distribution as provided under subpart (ii). The escrow agent shall place any cash dividends in an interest bearing

account. The cash dividends and any interest earned thereon will be disbursed in proportion to the number of shares released from escrow. All certificates representing stock dividends and shares resulting from stock splits of escrowed shares shall be delivered to the escrow agent to be held pursuant to the escrow agreement.

(iv) A summary of the terms of the escrow shall be included in the prospectus and, during the term of the escrow agreement and until the release of all shares from escrow, in subsequent prospectuses, annual reports to shareholders, proxy statements, or other disclosure materials used by shareholders or investors in making decisions with respect to the issuer.

(v) The escrow agent must be satisfactory to the Assistant Commissioner and may not be affiliated with any promoter of the corporation. The corporation shall not bear any of the fees or expenses associated with the escrow.

(g) Promoters' Investment. The offering of an issuer that is a promotional or development stage corporation shall be presumed unfair unless the equity investment of the promoters equals at least ten percent (10%) of the tangible net worth of the issuer adjusted for the proposed offering.

(h) Alternative Guidelines for Promotional Shares and Promoters' Investment:

1. In lieu of the guidelines set forth above in subparagraphs (d)(2)., (f) and (g), an issuer may comply with the standards of this subparagraph.

2. An offering of equity securities of a promotional or a development stage corporation may be deemed to be unfair if the ratio of equity capital to equity ownership of the public investors buying pursuant to the proposed offering on a per share basis is more than ten times the ratio of the equity capital to equity ownership of promoters, on a per share basis. For purposes of this subpart:

(i) With respect to public investors, "equity capital" shall mean the tangible consideration paid by the public investors.

(ii) With respect to promoters, "equity capital" shall mean the greater of the tangible consideration contributed to the equity of the issuer on a fully diluted basis, or the net worth of the issuer demonstrated by the most recent audited balance sheet furnished by the issuer in the registration statement and all interim unaudited balance sheets.

(iii) With respect to promoters, "equity ownership" shall mean the total number of shares owned on a fully diluted basis.

(iv) With respect to public investors, "equity ownership" shall mean the total number of shares to be offered to the public.

(Rule 0780-4-2-.06, continued)

EXAMPLE: Calculation of the Ratio of Equity Capital to Equity Ownership on a Per Share Basis.
(The example assumes that there are no outstanding options, warrants or convertible securities.)

	Total # of Shares	*Issuer's Net Worth*	*Proposed Price Per Share*	*Total Tangible Consideration*
Promoters'	880,000	$500,000		$300, 000
Public Investors'	200,000		$10.00	$2,000,000
Totals	1,080,000	$500,000		$2,300,000

Public Investor's Equity Capital / Equity Ownership = $2,000,000 / 200,000 == $10.00

Promoters' Equity Capital / Equity Ownership = $300,000 / 880,000 == .34090;.34 *x* 10 = $3.40

Promoters' Net Worth / Equity Ownership = $500,000 / 880,000 == .56818; .57 *x* 10 = $5.70

CONCLUSION : THE ALTERNATIVE TEST IS NOT MET.
$10.00>$3.40 OR 5.70

(i) Voting Rights

1. Unless either preferential treatment as to dividends and liquidation is provided with respect to the publicly offered securities or a public market exists for the securities, the offering of equity securities of an issuer having more than one class of equity securities outstanding will be deemed unfair to public investors if the class of equity securities offered to the public has no voting rights or less than equal voting rights in proportion to the number of shares of each class outstanding in all matters, including the election of members to the board of directors of the issuers.

2. If at the time of a proposed offering the issuer has authorized preferred stock issued or issuable with rights, preferences or privileges to be determined by the issuer's board of directors without further action by stockholders, the offering document shall include a

disclosure to the effect that a subsequent determination by the board of directors with respect to the rights, preferences or privileges of the preferred stock may adversely affect the rights of common stockholders.

(j) Preferred Stock and Debt Securities

1. The net earnings of the issuer for its last fiscal year prior to the offering or for the average of its last three fiscal years prior to the offering must be sufficient to cover adequately the dividends and redemption requirements, if any, on the preferred stock proposed to be offered. Net earning shall be determined exclusive of non-recurring items and shall be adjusted for any debt securities or preferred stock to be redeemed with the proceeds of the offering, less applicable income tax effects.

2. The net earnings of the issuer for its last fiscal year prior to the offering, or for the average of its last three fiscal years prior to the offering, must be sufficient to cover adequately its debt service requirements on all debt securities issued subsequent to its last fiscal year (including all securities proposed to be offered). Net earnings shall be determined before taxes, depreciation and extraordinary items and shall be adjusted for any debt securities to be redeemed with the proceeds of the offering and for applicable tax effects.

3. Upon completion of the offering, the total amount of debt of the issuer must be reasonable in proportion to the amount of equity of the issuer. Reasonableness is to be determined in relation of the prevailing debt-equity ratios for comparable companies in the issuers' industry.

4. If the issuer has made or proposes to make any material acquisitions subsequent to the last year specified in parts 1.-3., the earnings for each year shall be restated on a pro-forma basis to reflect such acquisition.

5. The sale of preferred stock or debt securities by promotional or development stage corporations is presumed not to meet the standard in paragraph (1) of this rule unless a variance is granted pursuant to paragraph (3) of this rule.

6. The issuer may not bind itself to purchase debt securities or preferred stock at the request of the holder prior to maturity except pursuant to sinking fund provisions or pursuant to some other reasonable method fully disclosed in the prospectus.

(k) Loans to Company Officials

1. The sale of securities by an issuer may be deemed unfair if the issuer or its affiliates have made, or may make, loans or forbearances to company officers, directors, or controlling persons, other than as described below:

(i) Advances for travel, business expense, relocation and similar ordinary operating expenditures.

(ii) Any other loans or forbearances for specific purposes directly related to the ordinary course of the issuer's business, or for bona fide personal emergencies, provided the loans or forbearances are approved by a majority of disinterested members of the issuer's board of directors.

(iii) Any other loans or forbearances approved by a majority of disinterested shareholders (excluding all company officials and controlling persons) pursuant to

a proxy solicitation conforming to the Securities and Exchange Commission's proxy rules.

(iv) An issuer or affiliate whose primary business is that of making loans may make loans to the officers, directors, or controlling persons of the issuer or affiliate provided that the loans:

(I) Will be evidenced by a promissory note naming the lender as payee, and contain an annual percentage rate which is reasonably comparable to that normally charged to non-affiliates by other commercial lenders for similar loans made in the lender's locale;

(II) Will be repaid pursuant to appropriate amortization schedules and contain default provisions comparable to those normally used by other commercial lenders for similar loans made to non-affiliates in the lender's locale.

(III) Will be made only if credit reports and financial statements, or other reasonable investigation appropriate in the light of the nature and terms of the loan and which meet the loan policies normally used by other commercial lenders for similar loans made to non-affiliates in the lender's locale show the loan to be collectible and the borrower a satisfactory credit risk; and

(IV) The purpose of the loan and the disbursement of proceeds are reviewed and monitored in a manner comparable to that normally used by other commercial lenders for similar loans made in the lender's locale.

2. All loans except those described in part 1. above shall be repaid in full prior to the offering. The Division may waive this requirement if:

(i) The issuer is a going concern and repayment of such loan will be made pursuant to appropriate amortization schedules; or

(ii) Any portion of the offering is by or on behalf of any company official to whom a loan or forbearance has been made, and such person undertakes to effect repayment from the proceeds of the offering and repayment to the extent of such proceeds will be made immediately upon completion of the offering.

3. If the issuer or its affiliates has or will make loans or forbearances to officers, directors or controlling persons, the prospectus or offering circular shall disclose the terms and details of the loans or forbearances.

(l) Impoundment of Proceeds. The Division may require that as a condition to registration that all proceeds of sales of securities be impounded in escrow until such time that a sufficient amount has been realized to accomplish the purpose of the offering.

(m) Future Self-Dealing Transactions. The prospectus shall contain a statement to the effect that all future transactions with affiliates of the issuer are to be on terms no less favorable than could be obtained from an unaffiliated third party and must be approved by a majority of the directors including the majority of disinterested directors.

(n) Standards for Specific Issuers.

1. Applicability

(Rule 0780-4-2-.06, continued)

(i) The Statements of Policy referred to in this subparagraph (n) apply to the indicated specific type of security and will, by analogy, be applied to securities in other forms. Deviations from these guidelines may be permitted by the Division where good cause is shown in accordance with paragraph (3) of this rule.

(ii) The Division may grant effectiveness to any offering that is subject to review under guidelines below on a basis other than that permitted in such guidelines where the offering requires each investor in this state (including transferees) to have a minimum net worth of a least $250,000 exclusive of home, home furnishings and automobiles and to have had during the last tax year and be expected to have during the current tax year a gross income of at least $65,000 or, in the alternative, a minimum net worth of at least $500,000 exclusive of home, home furnishings and automobiles. In the case of such offerings, the Division may require a statement signed by each investor in this state acknowledging how the offering varies from the standards set forth in the guidelines below.

(iii) The term "Administrator" as used in these guidelines shall mean the Assistant Commissioner.

(iv) Copies of these guidelines may be obtained from the Division upon request and payment in advance of a reasonable charge for coping.

2. Cattle-Feeding Programs

The statement of policy on Registration of Publicly Offered Cattle-Feeding Programs adopted by NASAA, as reported at paragraph 601 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

3. Church Bonds

The Statement of Policy on Church Bonds adopted by NASAA, as reported at paragraph 1001 of CCH *NASAA Reports*, as it may be amended from time to time, is incorporated herein by reference.

4. Commodity Pool Programs

The Statement of Policy on Registration of Commodity Pool Programs adopted by NASAA, as reported at paragraph 1201 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

5. Equipment Programs

The Statement of Policy on Equipment Programs adopted by NASAA, as reported at paragraph 1601 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

6. Finance Company Debt Securities

The Statement of Policy on Finance Company Debt Securities adopted by the Central Securities Administrators Council, as reported at paragraph 5431, CCH *Blue Sky Law Reports*, as it may be amended from time to time, is incorporated herein by reference.

7. Health Care Facility Offerings

The Statement of Policy on Health Care Facility Offerings adopted by NASAA, as reported at paragraph 2001 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

8. Oil and Gas Programs

The Statement of Policy on Registration of Oil and Gas Programs adopted by NASAA, as reported at paragraph 2601 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

9. Real Estate Investment Trusts

The Statement of Policy on Real Estate Investment Trusts adopted by NASAA, as reported at paragraph 3401 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

10. Real Estate Programs

The Statement of Policy on Real Estate Programs adopted by NASAA, as reported at paragraph 3601 of CCH *NASAA Reports*, as it may be amended from time to time, is incorporated herein by reference.

11. Miscellaneous Direct Participation Programs

In order to provide consistency in its review, the Division will use, to the extent appropriate, the NASAA Statement of Policy on Real Estate Programs, and particularly Sections II, III, and V through IX, as a reference in determining whether types of direct participation programs other than those specifically referenced in parts 1. through 10. above meet the standard set forth in subparagraph (1) of this rule.

12. Religious Denominations

The Guidelines for General Obligation Financing by Religious Denominations adopted by NASAA, as reported at paragraph 1951 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

(5) Coordinated Review - Equity.

(a) An offering of equity securities which is submitted pursuant to a coordinated review process agreed to by the Division and other states, will be deemed to meet the standard of paragraph (1) of this rule if it meets all of the terms and conditions of such coordinated review process, as well as meets the following guidelines:

1. The Statement of Policy on Corporate Securities Definitions adopted by NASAA, as reported at paragraph 3811 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

2. The Statement of Policy on Impoundment of Proceeds adopted by NASAA, as reported at paragraph 2151 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

3. The Statement of Policy on Loans and Other Affiliated Transactions adopted by NASAA, as reported at paragraph 371 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

(Rule 0780-4-2-.06, continued)

4. The Statement of Policy on Options and Warrants adopted by NASAA, as reported at paragraph 2801 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

5. The Statement of Policy on Preferred Stock adopted by NASAA, as reported at paragraph 3001 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

6. The Statement of Policy on Promoters= Equity Investment adopted by NASAA, as reported at paragraph 3101 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

7. The Statement of Policy on Promotional Shares adopted by NASAA, as reported at paragraph 3201 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

8. The Statement of Policy on Specificity in Use of Proceeds adopted by NASAA, as reported at paragraph 3831 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

9. The Statement of Policy on Underwriting Expenses and Underwriter's Warrants adopted by NASAA, as reported at paragraph 3671 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

10. The Statement of Policy on Unsound Financial Condition adopted by NASAA, as reported at paragraph 3821 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

11. The Statement of Policy on Voting Rights adopted by NASAA, as reported at paragraph 2401 of CCH NASAA Reports, as it may be amended from time to time, is incorporated herein by reference.

12. The Statements of Policy referenced in subparagraph (4)(n) of this rule will apply to the indicated specific type of security and will, by analogy, be applied to securities in other forms.

(b) Copies of these guidelines and terms and conditions of the coordinated review process may be obtained from the Division upon request and payment in advance of a reasonable charge for copying.

Authority: *T.C.A. §§48-2-107 and 48-2-116(a).* ***Administrative History:*** *Original rule filed September 28, 1990; effective November 12, 1990. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19, 2004.*

0780-4-2-.07 NON-PROFIT EXEMPTION.

(1) All persons offering securities claimed to be exempt under *T.C.A. §48-2-103(a)7.* shall, at least ten (10) days prior to any sale of such securities, file a notice on Form U-1 (including all applicable exhibits thereto) accompanied by the following additional information:

(a) A statement of the basis for the issuer's qualification for the EXEMPTION under *T.C.A. §48-2-103(a)7.;*

(b) An undertaking to notify the Commissioner immediately upon the receipt of any stop order, denial, order to show cause, suspension, or revocation order, injunction or restraining order, or

similar order entered by or issued by any regulatory authority or by any court, concerning the securities covered by the notice or other securities of the issuer currently being offered to the public, and

(c) A statement of whether or not the issuer has ever been the subject of any order described in subparagraph (b) above.

(2) The issuer shall furnish at a minimum the following information to offerees:

(a) 1. If the issuer is selling Church Bonds, a disclosure document prepared in accordance with the Statement of Policy on Church Bonds adopted by NASAA, as amended from time to time and as reported at paragraph 1001 of the CCH *NASAA Reports*. For purposes of this rule, the term "Church Bonds" shall mean certificates in the form of notes, bonds or similar instruments issued by a congregation or church that represents an obligation to repay a specific principal amount at a stated rate of interest.

2. If the issuer is selling General Obligation Financing Notes by Religious Denominations, a disclosure document prepared in accordance with the Guidelines for General Obligations Financing by Religious Denominations adopted by NASAA, as amended from time to time and as reported at paragraph 1951 of the CCH NASAA Reports. For purposes of this rule the term "General Obligation Financing" shall mean notes, certificates, or similar debt instruments issued by religious denominations that represent an obligation to repay a specific principal amount at a stated rate of interest.

(b) If the issuer is selling Health Care Facility Bonds, a disclosure document prepared in accordance with the Statement of Policy on Health Care Facility Offerings adopted by NASAA as amended from time to time and as reported at paragraph 2001 of the CCH *NASAA Reports*. For purposes of this rule, the term "Health Care Facility Bonds" shall mean certificates in the form of notes, bonds or similar instruments issued by a non profit health care facility that represent an obligation to repay a specific principal amount at a stated rate of interest.

(c) If the issuer is other than as described in subparagraphs (a) and (b) above, the disclosure document must contain:

1. Financial statements of the issuer prepared in accordance with generally accepted accounting principles including, but not limited to, the following:

(i) A balance sheet as of the end of the most recent fiscal year of the issuer; and

(ii) A statement of income for each of the issuer's three most recent fiscal years.

2. A statement from the issuer setting forth the issuer's plan for paying the principal and interest due on the securities to be sold, including, but not limited to, anticipated sources of revenue to be used in paying such principal and interest, and supporting financial information; and

3. A statement as to whether or not the issuer or any affiliate or predecessor has had any material default during the past ten (10) years in the payment of:

(i) principal, interest, dividends or sinking fund installments on any security or indebtedness for borrowed money; or

(ii) rentals under material leases with terms of three (3) years or more.

(Rule 0780-4-2-.07, continued)

(d) Legend. The offering document shall display on its cover substantially the following information, to the extent appropriate, in capital letters and, if printed, in boldface roman type at least as high as ten point modern type:

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICITONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FIANANCIAL RISK OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

Authority: *T.C.A. §§48-2-103(a)7 and 48-2-116(a).* ***Administrative History:*** *Original rule filed September 28, 1990; effective November 12, 1990. Amendment filed April 5, 2004; effective June 19, 2004.*

0780-4-2-.08 UNIFORM LIMITED OFFERING EXEMPTION.

(1) Preliminary Notes.

(a) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act.

(b) In view of the objective of this rule and the purposes and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly, stated in this rule.

(c) Nothing in this rule is intended to relieve registered broker-dealers or agents from the due diligence, suitability, or know-your-customer standards or any other requirements of the law otherwise applicable to such registered persons.

(2) Exemptions. By the authority delegated to the Commissioner in *T.C.A. §§48-2-103 (b)(11)* and *48-2-116,* the following transactions are determined to be exempt from *T.C.A. §§48-2-104* and *48-2-113.*

Any sale of securities offered and sold in compliance with the Securities Act of 1933, Regulation D., Rule 505, including any offer or sale made exempt by application of Rule 508 (a), 17 CFR Sections 230.505 and 230.508 (a), as made effective in SEC Release No. 33-6389 and as amended in subsequent SEC releases, which satisfies the following further conditions and limitations:

(a) Commissions.

1. No commission, fee or other remuneration shall be paid or given directly or indirectly to any person for soliciting any prospective purchaser in this state unless such person is appropriately registered in this state.

(Rule 0780-4-2-.08, continued)

2. It is a defense to a violation of this subparagraph if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that the person who received a commission, fee or other remuneration was not appropriately registered in this state.

(b) Disqualification. No exemption under this rule shall be available for the securities of any issuer if any of the parties described in Securities Act of 1933, Regulation A, Rule 252 (c), (d), (e) or (f), 17 CFR Section 230.252 (c)(d)(e) and (f):

1. Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the notice required under this exemption.

2. Has been convicted within five years prior to the filing of the notice required under this exemption of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud.

3. Is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the notice required under this exemption or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts or omitting to state material facts, was found and the order or judgement was entered within five years prior to the filing of the notice required under this exemption.

4. Is subject to any state's administrative enforcement order or judgment which prohibits, denies or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

5. Is currently subject to any order, judgement, or decree of any court of competent jurisdiction temporarily or preliminary restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction permanently restraining or enjoining such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the notice required under this exemption.

6. The prohibitions of parts 1. through 3. and 5. above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgement was entered against such person or if the broker dealer employing such party is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgement or decree relating to such person. No person disqualified under this subparagraph may act in a capacity other than that for which the person is licensed or registered.

7. Any disqualification caused by this subparagraph is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

8. It is a defense to a violation of this subparagraph if the issuer sustains the burden of proof to establish that the issuer did not know and in the exercise of reasonable care could not have known that a disqualification under this subparagraph existed.

(Rule 0780-4-2-.08, continued)

(c) Filing Requirement. The issuer shall file with the Division a notice on Form D (17 CFR Section 239.500):

1. No later than 15 days after the earlier of the first payment of consideration or the delivery of a signed subscription agreement by an investor in this state which results from an offer being made in reliance upon this exemption, and at such other times and in the form required under Regulation D, Rule 503, 17 CFR Section 230.503, to be filed with the Securities and Exchange Commission. The Form D shall contain all information requested on the form.

2. The notice on Form D shall be accompanied by:

(i) one copy of all written information furnished to offerees;

(ii) a Form U-2 Uniform Consent to Service of Process;

(iii) if the issuer is a corporation, a Form U-2A Uniform Form of Corporate Resolution;

(iv) a non-refundable filing fee in the amount of $300; and

(v) a statement noting the date of the first sale, if any of such security, in this state.

3. The issuer shall promptly furnish any additional information requested by the Division.

4. Any initial notice on or amendment to the Form D shall be manually signed by a person authorized by the issuer.

(d) Amendments. Any filing pursuant to this exemption shall be amended by filing with the Division such information and changes as may be necessary to correct any material misstatement or omission in the filing. Any written offering material required by this rule that was not prepared at the time of the initial filing, or which materially differs from the written offering material included in the filing shall be delivered or mailed to the Division concurrently with its first use in this state. There shall be no fees charged for amendment to filings pursuant to this rule.

(e) Suitability. In all sales to nonaccredited investors in this state the following conditions must be satisfied, or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that the following conditions are satisfied.

1. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent (10%) of the investor's net worth, it is suitable; and

2. The purchaser either alone or with his/her purchaser representative(s) has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investment.

(f) Legend. The offering document shall display on its cover substantially the following information, to the extent appropriate, in capital letters, and if printed, in boldface roman type at least as high as ten-point modern type:

(Rule 0780-4-2-.08, continued)

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED.

THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD. EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISK OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

(3) A failure to comply with a term, condition or requirement of subparagraphs (2)(a), (c) and (e) of this rule will not result in the loss of the exemption from the requirements of *T.C.A. §48-2-104* and *48-2-113* for any sale to a particular purchaser if the person relying on the exemption shows:

(a) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular purchaser;

(b) the failure to comply was insignificant with respect to offering as a whole; and

(c) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of subparagraphs (2)(a), (c)and (e).

(4) Where an exemption is established only through reliance on paragraph (3) of this rule, the failure to comply shall nonetheless be actionable by the Commissioner.

(5) Transactions which are exempt under this rule may not be combined with transactions exempt under any other rule or any section of the Act; however, nothing in this limitation shall act as an election. Should, for any reason, the offer and sale fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.

(6) The Commissioner may, by rule or order, increase the number of purchasers or waive any other conditions of this exemption.

(7) The exemption authorized by this rule shall be known and may be cited as the "Tennessee Uniform Limited Offering Exemption"

Authority: *T.C.A. §§48-2-103(b)(11), 48-2-116(a), and 48-2-124(e), Public Acts of 1997, Chapter 164, Section 1; §18 of the Federal Securities Act of 1933, as amended by the National Securities Markets Improvement Act of 1996.* ***Administrative History:*** *Original rule filed September 28, 1990; effective November 12, 1990. Amendment filed November 6, 1997; effective January 20, 1998.*

0780-4-2-.09 SUCCESSOR CORPORATE ISSUERS.

(1) If an issuer is a corporate successor to a corporate issuer that met the standards of *T.C.A. §48-2-103(a)8*, at the time of succession, the successor corporate issuer shall be deemed to have met the standards of *T.C.A. §48-2-103(a)8*, if the predecessor and successor corporations taken together do so, provided that:

(Rule 0780-4-2-.09, continued)

(a) The succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company.

(b) The assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; and

(c) The net income of the predecessor may, in accordance with generally accepted accounting principles, be consolidated with the income of the successor corporation.

Authority: *T.C.A. §§48-2-103(a)8 and 48-2-116(a).* ***Administrative History:*** *Original rule filed September 28, 1990; effective November 12, 1990.*

0780-4-2-.10 NASDAQ/NMS EXEMPTION.

(1) Exemption. By the authority delegated to the Commissioner in *T.C.A. §§48-2-103(b)11* and *48-2-116*, the following transactions are determined to be exempt from *T.C.A. §§48-2-104* and *48-2-113*:

Any sale of securities that are designated or approved for designation upon notice of issuance on the NASDAQ/NMS, any other security of the same issuer that is of senior or substantially equal rank, any security called for by subscription rights or warrants so designated or approved, or any warrant or right to purchase or subscribe to any of the foregoing.

(2) The Commissioner:

(a) Shall have the authority by rule or order to deny, suspend or revoke the exemption created by this rule as to a specific issuer or category of securities, and

(b) May rescind this rule based on a finding that;

1. The requirements of the NASDAQ/NMS have materially changed from those set forth in paragraph (3) below and no longer afford equivalent investor protection; or

2. The requirements of the NASDAQ/NMS as set forth in paragraph (3) below are not applied or enforced sufficiently to afford protection to investors.

(3) (a) 1. The NASD shall require at least the following minimum standards to be met for the designation of an issuer's securities on the quotation system:

	Alt. No. 1	Alt. No. 2
Net Tangible Assets	$4,000,000	$12,000,000
Public Float	500, 000	1,000,000
Pre-Tax Income	750,000	----------
Net Income	400,000	----------
Shareholders	800/400	800/400

(The minimum number of shareholders under each alternative is 800 for companies with 500,000 to 1,000,000 shares publicly held, and 400 for companies with over 1,000,000 shares publicly held and with daily trading volume in excess of 2,000 shares per day for six months.)

Market Value of Float	3,000,000	15,000,000
Minimum Bid	$5/share	----------
Operating History	----------	3 years

2. The rules of the NASD shall require at least two authorized market makers for each issuer.

3. For purposes of this subparagraph (a) the term "net tangible assets" is meant to include the value of patents, copyrights and trademarks but to exclude the value of good will.

(b) The NASD shall require at least the following minimum corporate governance standards for its domestic issuers;

1. Distribution of Annual and Interim Reports

(i) Each issuer shall distribute to shareholders copies of an annual report containing financial statements of the company and its subsidiaries. The report shall be distributed to shareholders a reasonable period of time prior to the company's annual meeting of shareholders and shall be filed with the NASD at the time it is distributed to shareholders.

(ii) Each issuer which is subject to SEC Rule 13a-13 shall make available to shareholders copies of quarterly reports including statements of operating results either prior to or as soon as practicable following the company's filing of its Form 10-Q with the SEC. If the form of such quarterly report differs from the Form 10-Q, both the quarterly report and the Form 10-Q shall be filed with the NASD. The statement of operations contained in quarterly reports shall disclose at a minimum, any substantial items of an unusual or nonrecurrent nature, net income, and the amount of estimated federal taxes.

(iii) Each issuer which is not subject to SEC Rule 13a-13 and which is required to file with the SEC or another federal or state regulatory authority interim reports relating primarily to operations and financial position shall make available to shareholders reports which reflect the information contained in such interim repots. Such reports shall be made available to shareholders either before or as soon as practicable following filing with the appropriate regulatory authority. If the form of the interim report made available to shareholders differs from that filed with the regulatory authority, both the report to shareholders and the report to the regulatory authority shall be filed with the NASD.

2. Independent Directors. Each issuer shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, "independent director" shall mean a person other than an officer or employee of the issuer or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgement in carrying out the responsibilities of a director.

3. Audit Committee. Each issuer shall establish and maintain an audit committee, a majority of the members of which shall be independent directors.

4. Shareholder meetings. Each issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to the NASD.

5. Quorum. Each issuer shall provide for a quorum as specified in its bylaws for any meeting of the holders of common stock; provided, however, that in no case shall such quorum be less that thirty-three and one-third percent (33 1/3%) of the outstanding shares of the issuer's common voting stock.

(Rule 0780-4-2-.10, continued)

6. Solicitation of Proxies. Each issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to the NASD.

7. Conflicts of Interest. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the issuer's audit committee or a comparable body for the review of potential conflict of interest situations where appropriate.

8. Shareholders Approval Policy. Each issuer shall require shareholder approval of the issuance of securities in connection with the following:

(i) Options plans or other special remuneration plans for directors, officers, or key employees.

(ii) Actions resulting in a change in control of the issuer.

(iii) The acquisition, direct or indirect, of a business, a company, tangible or intangible assets, or property or securities representing any such interests:

(I) From a director, officer, or substantial security holder of the issuer (including its subsidiaries and affiliates), or from any company or party in which one of such persons has a direct or indirect interest; and

(II) Where the present or potential issuance of common stock or securities convertible into common stock could result in an increase in outstanding common shares of 25% or more.

(c) Voting Rights

1. The NASD rules shall provide that no rule, stated policy, practice, or interpretation shall permit the authorization for designation on the NASDAQ/NMS ("authorization") or the continuance of the authorization, of any common stock or other equity security of a domestic issuer if, on or after September 1, 1988, the issuer issues any class of security or takes other corporate action that would have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock of such issuer registered pursuant to Section 12 of the 1934 Act.

2. For purposes of subpart (1) of this subparagraph (c), the following shall be presumed to have the effect of nullifying, restricting or disparately reducing the per share voting rights of an outstanding class or classes of common stock:

(i) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuer held by a beneficial owner or record holder based on the number of shares held by such beneficial or record holder;

(ii) Corporate action to impose any restriction on the voting power of shares of the common stock of the issuers held by a beneficial or record holder based on the length of time such shares have been held by such beneficial or record holder;

(iii) Any issuance of securities through an exchange offer by the issuer for shares of an outstanding class of common stock of the issuer, in which the securities issued have voting rights greater than or less than the per share voting rights of any outstanding class of the common stock of the issuer; or

(Rule 0780-4-2-.10, continued)

(iv) Any issuance of securities pursuant to a stock dividend, or any other type of distribution of stock in which the securities issued have voting rights greater than the per share voting rights of any outstanding class of the common stock of the issuer.

3. For purposes of part 1. of this subparagraph (c), the following, standing alone, shall be presumed not to have the effect of nullifying, restricting, or disparately reducing the per share voting rights of holders of an outstanding class or classes of common stock:

(i) The issuance of securities pursuant to an initial registered public offering:

(ii) The issuance of any class of securities, through a registered public offering, with voting rights not greater than the per share voting rights of any outstanding class of common stock of the issuer;

(iii) The issuance of any class of securities to effect a bona fide merger or acquisition, with voting rights not greater than the per share voting rights of any outstanding class of the common stock of the issuer; or

(iv) Corporate action taken pursuant to state law requiring a state's domestic corporation to condition the voting rights of a beneficial or record holder of a specified threshold percentage of the corporation's voting stock on the approval of the corporations independent shareholders.

4. Definitions. For the purposes of this subparagraph (c), the terms below shall have the following meanings and the rules of the NASD shall include such definitions for purposes of the prohibition in part 1. of this subparagraph (c):

(i) "Common Stock" shall include any security of an issuer designed as common stock and any security of an issuer, however designated, which by statute or by its terms, is common stock (e.g., a security which entitles the holders thereof to vote generally on matters submitted to the issuer's security holders for a vote.)

(ii) "Equity security" shall include any equity security defined as such pursuant to Rule 3a11-1-under the 1934 Act (17 CFR 240. 3a11-1).

(iii) "Domestic issuer" shall mean an issuer that is not a "foreign private issuer" as defined in Rule 3b-4 under the 1934 Act (17 CFR 240.3b-4)

(iv) "Security" shall include any security defined as such pursuant to Section 3(a)(10) of the 1934 Act, but shall exclude any class of security having a preference or priority over the issuer's common stock as to dividends, interest payments, redemption or payments in liquidation, if the voting rights of such securities only become effective as a result of specified events, not relating to an acquisition of the common stock of the issuer, which reasonably can be expected to jeopardize the issuer's financial ability to meet its payment obligation to the holders of that class of securities.

(d) Maintenance Criteria. After authorization for designation of a security on the NASDAQ/NMS, the issuer of such security must meet the following criteria in order for such designation to continue in effect:

1. The issuer of the security has net tangible assets of at least:

(Rule 0780-4-2-.10, continued)

(i) Two million dollars ($2,000,000) if the issuer sustained losses from continuing operations and/or net losses in two of its three most recent fiscal years; or

(ii) Four million dollars ($4,000,000) if the issuer has sustained losses from continuing operations and/or net losses in three of its four most recent fiscal years.

2. There are at least two hundred thousand (200,000) publicly held shares;

3. There are at least four hundred (400) shareholders or at least three hundred (300) shareholders of round lots; and

4. The aggregate market value of publicly held shares is at least one million dollars ($1,000,000).

Authority: *T.C.A. §§48-2-103(b)11 and 48-2-116(a).* ***Administrative History:*** *Original rule filed September 28, 1990; effective November 12, 1990.*

0780-4-2-.11 RESERVED.

0780-4-2-.12 NOTICE FILINGS FOR COVERED SECURITIES.

(1) Initial notice filings for covered securities.

(a) An initial notice filing for a covered security of an issuer to be sold in this state shall contain:

1. a copy of the issuer's prospectus and statement of additional information; however, if the person making the notice filing provides an accurate filing number from the Electronic Data Gathering Access and Retrieval (EDGAR) system or other electronic data gathering access and retrieval system maintained by the SEC, or other identifying designation issued by the SEC, paper copies of the issuer's prospectus and additional information are not required to be filed with the Division;

2. a completed and properly executed Form U-2, as provided under T.C.A. §48-2-124(e);

3. either (i) a completed and properly executed Form NF, Form D or Form U-1, as applicable, or (ii) a copy of the issuer's federal registration statement as filed with the Securities and Exchange Commission; and

4. the appropriate filing fee as set forth in T.C.A. §48-2-125.

(b) An issuer of a security, which is subject to the notice filing requirements for covered securities, shall make an initial notice filing with the Division prior to the sale of such security in this state, unless the security being sold is a covered security as defined under T.C.A. §48-2-102(8)(F)(iv);

(c) An issuer of a security that is defined as covered securities under T.C.A. §48-2-02(8)(F)(iv) shall make an initial notice filing with the Division no later than fifteen (15) days after the first sale of such covered security in this state.

(2) Renewal of notice filings for covered securities.

(a) A renewal of a notice for a covered security that may be renewed as provided under T.C.A. §48-2-125(c) shall consist of:

1. a copy of the issuer's prospectus and statement of additional information;

(Rule 0780-4-2-.12, continued)

2. either (i) a completed and properly executed Form NF, Form D or Form U-1, as applicable, or in (ii) a copy of the issuer's federal registration statement as filed with the Securities and Exchange Commission;

3. the appropriate filing fee as set forth in T.C.A. §48-2-125 (a).

(b) Any notice filing, subject to renewal which is not timely renewed, shall expire as provided under T.C.A. §48-2-125(c).

(c) A renewal of a notice filing for a covered security shall not stay the expiration of the notice filing if:

1. such renewal is deficient, and

2. such deficiency is not remedied prior to the expiration of the notice filing.

(3) Deficient notice filings.

(a) Documents. An issuer, who has filed an initial notice filing or a renewal of a notice filing for a covered security shall be subject to a stop order of the Commissioner suspending the offer of sale of such covered security in this state as provided under T.C.A. §48-2-125(d), if:

1. the filing is deficient by failing to satisfy the document filing requirements of T.C.A. §48-2-125 (a), (b), or (c) and paragraph (1)(a)1-3 of this rule, and

2. the document deficiency is not cured within ten (10) business days of the issuer's receipt of notification from the Division.

(b) Fees. An issuer, who has filed an initial notice filing or a renewal of a notice filing for a covered security shall be subject to a stop order of the Commissioner suspending the offer or sale of such covered security in this state, as provided under T.C.A. §48-2-125 (d), if:

1. the filing is deficient by failing to satisfy the fee requirements of T.C.A. §48-2-125 and paragraph (1)(a)(4) of this rule, and

2. the fee deficiency is not cured within ten (10) business days of the issuer's receipt of notification from the Division.

(c) In any case where the commissioner may issue a stop order, the issuer may be subject to further orders of the commissioner pursuant to T.C.A. §48-2-116.

(4) Failure to make notice filings.

(a) Any issuer who fails to make a notice filing for a covered security to be sold in this state, as set forth under T.C.A. §48-2-125 and paragraph (1)(b) or (c) of this rule, shall be subject to a stop order of the Commissioner, as provided under T.C.A. §48-2-125(d), suspending the offer or sale of such securities in this state.

(b) For purposes of T.C.A.§48-2-125 (d)(2) and paragraph (4) of this rule, a failure to make a notice filing cannot be promptly remedied:

1. if the security is a covered security, other than a covered security as defined under T.C.A. §48-2-102(8)(F)(iv) and the delay in making the notice filing, required under T.C.A. §48-2-125 (a), exceeds ten (10) business days from the date of the first sale of such security in this state, or

2. if the security is a covered security, as defined under T.C.A. §48-2-102(8)(F)(iv), and the delay in making the notice filing required under T.C.A. §48-2-125 (b) exceeds twenty five (25) calendar days from the date of the first sale of such security in this state.

(5) Refusal to pay notice filing fees.

(a) For purposes of this paragraph an issuer is deemed to refuse to pay the notice filing fee when:

1. the issuer is subject to a stop order under the provisions of paragraph (3)(b) of this rule; or

2. the issuer has failed to make a notice filing, as defined in paragraph (4)(b), and includes a failure to pay the appropriate notice filing fee.

(6) Unit Investment Trusts.

(a) Notwithstanding any of the requirements in paragraph (1) of this rule to the contrary, notice filings of series (except the first in a series) of unit investment trusts registered with the SEC under the Investment Company Act and not engaged in the business of investing in securities issued by one or more open end management investment companies may comply with the following alternative filing requirements:

1. One completed and properly executed Form NF, including the name and the address of the trustee, except that any exhibits filed with the Division within five (5) years preceding the filing of the application may be incorporated by reference to the extent that such exhibits are currently accurate:

2. A statement identifying one or more previous series of the unit investment trust for which an application for registration was made effective by the Division within five (5) years preceding the filing of the current application.

3. The following representations as filed with the SEC pursuant to SEC Rule 487:

(i) That the portfolio securities deposited in the series with respect to which the registration statement or pre-effective amendment is being filed do not differ materially in type or quality from those deposited in the previous series identified by the applicant; and

(ii) That, except to the extent necessary to identify the specific portfolio securities deposited in, and to provide essential financial information for, the series with respect to which the registration statement or pre-effective amendment is being filed, the registration statement or pre-effective amendment does not contain disclosures that differ in any material respect from those contained in the registration statement of the previous series identified by the applicant.

4. A copy of any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities of any state or by any court or the SEC;

5. The appropriate filing fee computed in accordance with T.C.A. §48-2-125; and

6. Forms U-2 and U-2A or a statement in the transmittal letter that such forms are already on file with respect to the issuer under its current name of each firm-commitment underwriter.

(Rule 0780-4-2-.12, continued)

(b) Upon SEC effectiveness, the following shall be filed with the Division;

1. Notice of SEC effectiveness, to include:

(i) The full name of each series of the unit investment trust registered with the SEC;

(ii) The time and date declared effective by the SEC;

(iii) The public offering price per unit;

(iv) The amount of sales commission per unit;

(v) The number of units registered with the SEC; and

(vi) The total aggregate dollar amount of the offering.

2. One copy of the post-effective amendment containing one copy of the final prospectus.

(c) Each series underlying a unit investment trust constitutes a separate and distinct security under the Act and shall be separately notice filed under the Act. Unit investment trusts applying to notice file multiple series shall file separate notices for each series containing all of the information specified in subparagraph (a) above, with each Form NF specifically identifying the series to be notice filed.

(d) The Commissioner may deny, suspend or revoke the availability of this paragraph (6) to a unit investment trust if it appears to the Commissioner that a notice filing that is or is intended to become effective in this state in reliance upon this paragraph is incomplete or inaccurate in any material respect or the filer has not complied with the requirements set forth in this paragraph (6).

(e) The notice filing of a unit investment trust expires one year from the date of SEC effectiveness, subject to T.C.A. §48-2-125.

Authority: *T.C.A. §§48-2-116, 48-2-108, and 48-2-125; Public Acts of 1997, Chapter 164, Section 8; §18 of the Federal Securities Act of 1993, as amended by the National Securities Markets Improvement Act of 1996.* ***Administrative History:*** *Original rule filed November 6, 1997; effective January 20, 1998. Amendment filed May 15, 2002; effective July 29, 2002. Amendment filed April 5, 2004; effective June 19, 2004.*

0780-4-2-.13 NOTICE FILINGS FOR EXEMPT EMPLOYEE PLANS.

(1) All issuers who wish to offer securities in, or into this state in reliance on an exemption afforded to sales of securities in an employee stock purchase/ option plan must file with the Commissioner no later than fifteen (15) days after the first sale:

(a) One copy of the form entitled "Notice of Sale of Securities Pursuant to Employee Stock Purchase/Option Plan Exemption", as provided by the Division;

(b) A Form U-2 Uniform Consent to Service of Process;

(c) If the issuer is a corporation, a Form U-2A Uniform Form of Corporate Resolution;

(d) A non-refundable filing fee in the amount of $500; and

(e) A statement noting the date of the first sale, if any, of such security in this state.

(Rule 0780-4-2-.13, continued)

Authority: *T.C.A. §§48-2-103(b)(9), 48-2-116, and Public Acts of 2001, Chapter 278.* ***Administrative History:*** *Original rule filed May 15, 2002; effective July 29, 2002.*

0780-4-2-.14 NOTICE FILINGS FOR SECURITIES SOLD TO ACCREDITED INVESTORS.

(1) All issuers who wish to offer securities in, or into this state in reliance on the exemption afforded to sales of securities to accredited investors, as set forth in Tenn. Code Ann. § 48-2-103(b)(14), must file with the Commissioner no later than fifteen (15) days after the first sale:

(a) One copy of the form entitled "Notice of Sale of Securities Pursuant to Accredited Investor Exemption", as provided by the Division;

(b) A Form U-2 Uniform Consent to Service of Process;

(c) One copy of the general announcement, if one is made regarding the proposed offering;

(d) A non-refundable filing fee in the amount of $500; and

(e) A statement noting the date of the first sale, if any, of such security in this state.

Authority: *T.C.A. §§48-2-103(b)(14), 48-2-116, and Public Acts of 2001, Chapter 278.* ***Administrative History:*** *Original rule filed May 15, 2002; effective July 29, 2002.*

0780-4-2-.15 BANK HOLDING COMPANY EXEMPTION.

(1) All issuers who wish to offer securities in, or into this state in reliance on an exemption afforded to sales of securities by a bank holding company or a savings and loan holding company must file with the Commissioner no later than ten (10) days prior to the first sale:

(a) One copy of the Form U-1, Uniform application to Register Securities;

(b) A Form U-2 Uniform Consent to Service of Process;

(c) If the issuer is a corporation, a Form U-2A Uniform Form of Corporate Resolution;

(d) A non-refundable filing fee in the amount of $100.00; and

(e) A copy of all sales or advertising literature used or proposed to be used.

Authority: *T.C.A. §§48-2-103(a)(13) and 48-2-116(a).* ***Administrative History:*** *Original rule filed April 5, 2004; effective June 19, 2004.*